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FAIRWAY NINE ONE ASSOCIATION
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Index to: AMENDED COVENANTS & RESTRICTIONS

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AMENDED AND RESTATED CONDOMINIUM DECLARATION

FOR

FAIRWAY NINE ONE CONDOMINIUMS

THIS AMENDED AND RESTATED Condominium Declaration amends, restates, supersedes and replaces the following:

- A. Condominium Declaration for Fairway Nine Condominiums, Phase I, recorded June 25, 1981, as Instrument No. 216493, records of Blaine County, Idaho.
- B. Condominium Declaration for Fairway Nine Condominiums, Phase II, recorded November 4, 1981, as Instrument No. 221012, records of Blaine County, Idaho.
- C. Amended Condominium Declaration for Fairway Nine Condominiums, Phase II, recorded December 20, 1981, as Instrument No. 221980, records of Blaine County, Idaho.
- D. Condominium Declaration for Fairway Nine Condominiums, Phase III, recorded December 7, 1982, as Instrument No. 233262, records of Blaine County, Idaho.
- E. Second Amendment to Master Declaration of Covenants, Conditions and Restrictions as to the Use of Real Property Embraced within Fairway Nine Phase I, Phase II and Phase III, Condominium Association, Inc., recorded November 17, 1994, as Instrument No. 373074, records of Blaine County, Idaho.
- F. Amendment to Condominium Declarations for Fairway Nine Condominiums, Phase I, Phase II and Phase III, recorded October 30, 1997, as Instrument No. 407506, records of Blaine County, Idaho.

It is intended that the Condominium Declarations for Fairway 9 Condominiums, Phases I, II and III, be merged into this Amended and Restated Condominium Declaration for Fairway 9 Condominiums, Phases I, II and III. The merged Declarations shall also be known as the Condominium Declaration for Fairway Nine One.

This Amended and Restated Condominium Declaration has been consented to and agreed upon by owners representing an aggregate ownership interest of sixty-six and two-thirds percent (66-2/3%) or more of the Fairway Nine One Condominiums, as reflected on the real estate records of Blaine County, Idaho.

ARTICLE I. Recitals and Certain Definitions.

Section 1.1 The Real Property. The real property covered by this Declaration is described in Exhibit A attached hereto and hereby made a part of this Declaration (the "Real Property").

Section 1.2 Intention. The Real Property was developed for condominium ownership under the Condominium Property Act of the State of Idaho.

Section 1.3 The Project. The term "Project" shall collectively mean the Real Property and all buildings and other improvements located on the Real Property,'

Section 1.4 Type of Ownership. This condominium project will provide a means for ownership in fee simple of separate interests in Units and for co-ownership with others, as tenants in common, of Common Area, as those terms are herein defined.

ARTICLE II. Additional Definitions.

The following terms shall have the following meaning when used herein unless the context otherwise requires.

Section 2.1 Building. "Building" means one of the buildings constructed on the Real Property pursuant to this Declaration.

Section 2.2 Unit. "Unit" means the separate interest in a condominium as bounded by the interior surfaces of the perimeter walls, floors, ceilings, windows and doors thereof, and the interior surfaces of built-in fireplaces, as shown and numbered on the Condominium Map to be filed for record, together with all fixtures and improvements therein contained, except refrigeration appliances and personal property of the owners. Notwithstanding such markings, the following are not part of a "Unit": bearing walls, columns, floors and roofs (except for the interior surface thereof, of a perimeter wall, floor or ceiling), foundations, clothes chutes, shafts, central heating systems, reservoirs, tanks, pumps and other services used by more than one Unit, pipes, vents, ducts, flutes, chutes, conduits, wires, except the outlets thereof when located within the Unit. The interior surfaces of a perimeter window or door means at the points at which such surfaces are located when such windows or doors are closed; the physical windows and doors themselves are part of the Limited Common Area as herein defined. Association insurance coverage, primarily for common area property, may extend to the individual Unit or Condominium as further described in Article XI, Section 11.1, Types of Insurance.

Section 2.3 Common Area. "Common Area" means the entire project excepting all Units.

Section 2.4 Limited Common Area. "Limited Common Area" means that Common Area designated herein for exclusive use by Owners of particular Condominiums, as those terms are herein defined.

Section 2.5 General Common Area. "General Common Area" means all Common Area excepting all Limited Common Area.

Section 2.6 Condominiums. "Condominium" means a separate interest in a Unit together with an undivided interest in common in the Common Area as set forth in Exhibit B attached hereto and by this reference made a part hereof.

Section 2.7 Owner. "Owner" means any person or entity, at any time owning a Condominium; the term "Owner" shall not refer to any Mortgagee, as herein defined, unless such Mortgagee has acquired title pursuant to foreclosure or any proceeding in lieu of foreclosure.

Section 2.8 Mortgage. "Mortgage" means any mortgage, deed of trust, or other security instrument by which a Condominium or any part thereof is encumbered.

Section 2.9 Mortgagee. "Mortgagee" means any person or any successor to the interest of such person named as the mortgagee, trust beneficiary, or creditor under any mortgage, as mortgage is defined in Article II, Section 2.8, under which the interest of any Owner, or successor to the interest of such Owner, is encumbered.

Section 2.10 Association. "Association" means Fairway Nine One Association, an Idaho corporation, not for profit, its successors and assigns, organized as provided herein.

Section 2.11 Condominium Map. "Condominium Map" means the Condominium Map for Fairway Nine One, a Replat of Fairway Nine Condominiums Phases I, II, and III filed for record in the office of the County Recorder of Blaine County, Idaho, on September 16, 1997, as Instrument No. 406022, consisting of a plat or survey map of the surface of the ground of the Real Property showing a survey and legal description thereof, the location of each Building with respect to the boundaries of the Real Property, Unit number identifying the Units, together with such other information as included thereint.

The diagrammatic floor plans of the Buildings showing the boundaries of each Unit within each Building, including horizontal and vertical locations and dimensions of all boundaries of each Unit are recorded as follows:

(a) Condominium Map and Diagrammatic Floor Plans of Fairway Nine Condominiums, Phase I recorded June 25, 1981, as Instrument No. 216494, records of Blaine County, Idaho.

(b) Condominium Map and Diagrammatic Floor Plans of Fairway Nine

Condominiums, Phase II, recorded November 4, 1981, as Instrument No. 221012, records of Blaine County, Idaho.

(c) Condominium Map and Diagrammatic Floor Plans of Fairway Nine Condominiums, Phase III, recorded December 7, 1982, as Instrument No. 233266, records of Blaine County, Idaho.

Section 2.12 Residential Units. "Residential Units" means Fairway Nine One, Unit Numbers 4301 through 4386 inclusive which have been constructed and which shall be assessed as provided in Article IX hereof.

Section 2.13 Garage Units. "Garage Units" means Fairway Nine One, Unit Numbers G-1 through G-16 which have been constructed and which shall be assessed as provided in Article IX hereof.

ARTICLE III. Statement of Intention and Purpose.

The Project and every part thereof is held and shall be held, conveyed, devised, leased, rented, encumbered, used, occupied and improved and otherwise affected in any manner subject to the provisions of this Declaration, each and all of which provisions are hereby declared to be in furtherance of the general plans and scheme of condominium ownership referred to in Article I and are further declared to be for the benefit of the Project and every part thereof and for the benefit of each Owner. All provisions hereof shall be deemed to run with the land as covenants running with the land or as equitable servitudes, as the case may be, and shall constitute benefits and burdens to all persons hereafter acquiring or owning any interest in the Project, however such interest may be obtained.

ARTICLE IV. Nature and Incidents of Condominium Ownership.

Section 4.1 Estates of an Owner. The Project is hereby divided into Condominiums, each consisting of a separate interest in a Unit and an undivided interest in common in the Common Area. The common area percentages for Block 1 Common Area and Block Common Area shall be separated for purposes of property tax assessment and allocation of common area expenses. Owners of dwelling units situated within Block 1 Common Area shall be responsible for property tax assessment and common area expenses based on Block 1 Common Area percentages. Owners of garage units shall be responsible for property tax and assessments and common area expenses based on Block 2 Common Area percentages. Common Area percentages appurtenant to each unit are set forth in the attached Exhibit B. The percentage of ownership interest in the Common Area which is to be allocated to each Unit for purposes of tax assessment under Section 55-1514 of the Idaho Code and for purposes of liability as provided by Section 55-1515 of such Code shall be the same as set forth in Exhibit B as amended from time to time. Exhibit B also contains a legal description of each Unit in the Project, consisting of the identifying number of such Unit as shown on the Condominium Map. Such undivided interests in the Common Area are hereby declared to be appurtenant to the respective Units.

The Association is hereby authorized to establish in its discretion separate common area

percentages in the future for purposes of property tax assessment based on the value of each condominium unit and the value of the project as a whole. In order to establish such separate common area percentages for tax purposes the Association is authorized to obtain appraisals of all the condominium units to determine values.

The condominium owners hereby authorize the Board of Directors, its agents and appraisers to enter into their respective condominiums with notice at reasonable times for appraisal purposes. The cost of the appraisal shall be paid by the condominium owner who has increased the unit's value by improvements to the condominium. Failure to pay such cost shall be enforced by the assessment provisions of the Declaration. The Association shall determine the common area percentages for purposes of property tax assessment based upon the appraised value of the condominium unit and amend the Declaration accordingly.

If the condominium owner contests the appraised value of their condominium, the value shall be determined in accordance with the Idaho Uniform Arbitration Act. The Association is authorized to re-appraise the condominiums from time to time in the future if the Board in its discretion deems it necessary in order to accurately reflect the value of the condominiums, provided, however, any such re-appraisal shall not occur more than once in every five-year period. Further, the Association shall have the authority to adopt rules and regulations that require a condominium owner to re-appraise their unit at their expense in situations where the condominium has increased in value due to improvements or otherwise, and in addition, to provide the Association with the sales price when the condominium is sold.

The owners and each of them, hereby appoint the Board of Directors as their attorney in fact in connection with condominium unit and respective interest in the Common Area with full power and authority in such owners' name, place and stead to execute, deliver and record as necessary such documents as may be necessary or appropriate to carry out this Article of the Declaration, including, but not limited to the conveyance by quitclaim deed or otherwise of the owner's common area interest as may be necessary from time to time to adjust the common area percentages. (*First Amendment 10-30-97*)

Section 4.2 Limited Common Area. "Limited Common Area" shall consist of: balconies, porches, windows, doors and heating equipment located in the crawl space under each Unit. The balcony or balconies and the porch or porches adjoining a Unit and the individual heating equipment, as referred to above, shall be used in connection with such Unit to the exclusion of the use thereof by the other owners of Common Area except by invitation.

Section 4.3 Parking Area. The Association shall maintain as a part of the Common Area a parking area for the use of the Owners, and other tenants or occupants of the Project or any portion thereof, in a size and of a nature deemed adequate by the Association. The right to the use of such parking area and to the maintenance thereof by the Association shall be appurtenant to and shall pass with the title to each Condominium.

Section 4.4 Recreational Facility. Easements relating to the joint use, operation and maintenance of such recreational facility are provided for in Section 4.16 hereof. Owners, tenants and guests shall use the Recreation Facility at their own risk and Association shall not be liable

for any injury or death attributable to such use, unless proven in court of law such injury or death is due to gross negligence or intentional misconduct attributable to the care and maintenance of the Recreation Facility deemed the responsibility of the Association. Owner, tenants and guests shall follow all posted safety rules. Association shall not be held liable for Owners, tenants or guest's failure to follow posted rules where injury or death may occur.

Section 4.5 Combination of Units. Units shall not be combined.

Section 4.6 Title. Title to a Condominium may be held or owned by any entity and in any manner in which title to any other real property may be held or owned in the State of Idaho.

Section 4.7 Inseparability. No part of a Condominium or of the legal rights comprising ownership of a Condominium may be separated from any other part thereof during the period of Condominium ownership prescribed herein, so that each Unit and the undivided interest in the Common Area appurtenant to such Unit shall always be conveyed, devised, encumbered, and otherwise affected only as a complete Condominium. Every gift, devise, bequest, transfer, encumbrance, conveyance or other disposition of a Condominium or any part thereof shall be presumed to be a gift, devise, request, transfer, encumbrance, or conveyance, respectively, of the entire Condominium; together with all appurtenant rights created by law or by this Declaration.

Section 4.8 Partition Not Permitted. The Common Area shall be owned in common by all owners of Condominiums, and no owner may bring any action for partition thereof.

Section 4.9 Owner's Right To Common Area. Subject to the limitations contained in this Declaration, each owner shall have the nonexclusive right to use and enjoy the General Common Area, and shall have the exclusive right to use and enjoy the Limited Common Area designated herein for exclusive use by such Owner.

Section 4.10 Taxes and Assessments. Each Owner shall execute such instruments and take such actions as may reasonably be specified by the Association to obtain separate real property tax assessments of the interest of each Owner in each Condominium. If any taxes or special district or other assessments may, in the opinion of the Association, nevertheless be a lien on the Project or any part thereof, the Association shall pay the same and assess the same to the Owner or Owners responsible therefor. Each Owner shall pay the taxes or assessments assessed against his Condominium, or interest therein, or his interest in the Common Area, or any part of any or all of the foregoing. Each Owner shall pay all taxes, rates, impositions and assessments levied against the Project or any part of the Common Area in proportion to his interest in the Common Area, such payment to be made to the Association at least thirty (30) days prior to the delinquency of such tax or assessment. Each such unpaid tax or assessment shall bear interest at the rate of ten percent (10%) per annum from and after the time the same becomes payable by each Owner and shall be secured by the lien created by Section 9.6 hereof. Notwithstanding the foregoing, taxes, assessments or other charges attributable to the Common Area shall be apportioned among the Owners of Units as provided in Article IX hereof.

Section 4.11 Owner's Rights with Respect to Interiors. Each Owner shall have the exclusive right to paint, repaint, tile, wax, paper or otherwise maintain, refinish and decorate the

interior surfaces of the walls, ceilings, floors, doors and clean the exterior and interior surfaces of the windows all of which form the boundaries of his Unit and all walls, ceilings, floors and doors within such boundaries. No Owner may, without the consent of the Association, replace the draperies originally installed in the Unit with other than draperies of the same design, quality and color, nor otherwise place anything in or on the Unit windows which is in variance with the general appearance of windows of similar Units.

Section 4.12 Easements for Encroachments. If any part of the Common Area encroaches or shall hereinafter encroach upon a Unit or Units, an easement for such encroachment and for the maintenance of the same shall and does exist. If any part of a Unit encroaches or shall hereafter encroach upon the Common Area, or upon an adjoining Unit or Units, an easement for such encroachment and for the maintenance of the same shall and does exist. Such encroachments shall not be considered to be encumbrances either on the Common Area or the Units. Encroachments referred to herein include, but are not limited to, encroachments caused by settling, rising or shifting of the earth, or by changes in position caused by repair or reconstruction of the Project or any part thereof.

Section 4.13 Easements of Access for Repair, Maintenance and Emergencies. Some of the Common Area is or may be located within the Units or may be conveniently accessible only through the Units. The Owners of other Units shall have the irrevocable right, to be exercised by the Association as their agent, to have access to each Unit and to all Common Area from time to time during such reasonable hours as may be necessary for the maintenance, repair or replacement of any of the Common Area located therein or accessible therefrom or for making emergency repairs therein necessary to prevent damage to the Common Area or to another Unit or Units. The Association shall also have such right independent of any agency relationship. Damage to the interior of any part of a Unit or Units resulting from the maintenance, repair, emergency repair or replacement of any of the Common Area or as a result of emergency repairs within another Unit at the instance of the Association or of Owners shall be an expense of all of the Owners; provided, however, that if such damage is the result of negligence of the Owner of a Unit, then such Owner shall be financially responsible for all of such damage and insurance deductibles that may be applicable. Amounts owing by Owners pursuant hereto shall be collected by the Association by assessment pursuant to Article IX, below.

Section 4.14 Owner's Right to Ingress and Egress and Support. Each Owner shall have the right to ingress and egress over, upon and across the Common Area necessary for access to his Unit and to the Limited Common Area designated for use in connection with his Unit, and shall have the right to the horizontal and lateral support of his Unit, and such rights shall be appurtenant to and pass with the title to each Condominium.

Section 4.15 Association's Right to Use of Common Area. The Association shall have a nonexclusive easement to make such use of the Common Area as may be necessary or appropriate to perform the duties and functions which it is obligated or permitted to perform pursuant to this Declaration, including the right to construct and maintain in the General Common Area maintenance and storage facilities for use by the Association.

Section 4.16 Easements and Utilities. In order to adequately serve each Unit, the

recreational facility referred to in Section 4.4 hereof and the Common Area, the 86 Phase I Units, the 28 Phase II Units, the 16 Phase VII Units, and utility facilities may be constructed and may encroach on Common Area, Limited Common Area or the Units. An easement for such encroachment and for the maintenance of the same shall and does exist. There shall be, and hereby are, therefore, reserved and created for the benefit of such Owners of the 86 Phase I Units, the 28 Phase II Units, the 16 Phase VII Units and their respective guests, invitees, successors and assigns and mortgagees the following easements: (1) a perpetual, nonexclusive easement and right-of-way over and across the private roadways, parking areas and pathways in the Project as a means of ingress and egress to and from such proposed condominiums and to and from the recreational facility described in Section 4.4 hereof including the right to park in the parking areas adjacent to and designed for the recreational facility, and (2) a perpetual nonexclusive easement over, across and under the utility easements in the Project for the location, maintenance and replacement of utility lines and facilities to provide utility service to the condominiums to be located adjacent to or in the vicinity of the Project and to the recreational facility referred to in Section 4.4 hereof. In addition, Elkhorn at Sun Valley or Elkhorn Property Owners' Association, Inc., ("Master Association") from time to time, constructs walkways and bridle paths over and across areas in the Elkhorn area for the benefit of members of the Master Association and the general public and may have or may in the future desire to locate, portions of such pathways and bridle paths on portions of the Project. Owners of Units in this Project will, as provided in Section 17.4 hereof become members of such Master Association and thus will be entitled to the use of all facilities of the Master Association including any such bridle paths or walkways located on the Project. There is therefor reserved for the benefit of the Master Association, its members and the general public an easement over and across those portions of the Project, as the Master Association deems appropriate for the location, maintenance and use for bridle paths and walkways.

Section 4.17 Deleted in its entirety September 4, 2009.

Section 4.18 Easements Deemed Created. All conveyances of Condominiums hereafter made, whether by the Declarant or otherwise, shall be construed to grant and reserve such reciprocal easements as shall give effect to Sections 4.12, 4.13, 4.14, 4.15 and 4.16 above, even though no specific reference to such easements or to those Sections appear in any such conveyance.

ARTICLE V. Description of a Condominium.

Every contract for the sale of a Condominium and every other instrument affecting title to a Condominium may describe that Condominium by the number shown on the Condominium Map and to this Declaration as each appears on the records of the County Recorder of Blaine County, Idaho, in the following fashion:

Condominium Unit ____ as shown on the Condominium Map for Fairway 9 Condominiums, Phase I appearing in the Records of Blaine County, Idaho as Instrument No. _____ and as defined and described in that Condominium Declaration for Fairway Nine One recorded in the Records of Blaine County, Idaho, as Instrument No. _____.

Such description will be construed to describe the Unit, together with the appurtenant undivided interest in the Common Area, and to incorporate all the rights incident to ownership of a Condominium and all the limitations on such ownership as described in this Declaration.

ARTICLE VI. Mechanic's Lien Rights.

No labor performed or services or materials furnished with the consent of or at the request of an Owner or his agent or his contractor or subcontractor shall be the basis for the filing of a lien against the Condominium of any other Owner, or against any part thereof, or against any other property of any other Owner, unless such other Owner has expressly consented to or requested the performance of such labor or furnishing of such materials or services. Such express consent shall be deemed to have been given by the Owner of any Condominium in the case of emergency repairs thereto. Labor performed or services or materials furnished for the Project, if duly authorized by the Association, shall be deemed to be performed or furnished with the express consent of each Owner. Any Owner may remove his Condominium from a lien against two or more Condominiums or any part thereof by payment to the holder of the lien of the fraction of the total sum secured by such lien which is attributable to his Condominium.

ARTICLE VII. The Association.

Section 7.1 Membership. The Articles of Incorporation and By-Laws of the Association are attached hereto as Exhibit C and hereby made a part of this Declaration. Every Owner shall be entitled and required to be a member of the Association. If title to a Condominium is held by more than one person, the membership related to that Condominium shall be shared by all such persons in the same proportionate interests and by the same type of tenancy in which the title to the Condominium is held. An Owner shall be entitled to one membership for each Condominium owned by him. No person or entity other than an Owner may be a member of the Association, and the Articles of Incorporation or By-Laws of the Association always shall so state and shall in addition state that the memberships in the Association may not be transferred except in connection with the transfer of a Condominium. Provided, however, that the rights of membership may be assigned to a Mortgagee as further security for a loan secured by a lien on a Condominium.

Section 7.2 Voting Rights. The total number of votes which may be cast by all members of the Association shall be set forth in the Articles of Incorporation and By-Laws of the Association, attached hereto as Exhibit C, and each Owner shall be entitled to vote the same percentage of the total number of votes of the Association as such Owner's percentage interest in the Common Area as set forth in Exhibit B attached hereto.

Section 7.3 Cumulative Voting. In any election of the members of the Board, every Owner entitled to vote at such elections, shall have the right to cumulate his votes and give one candidate, or divide among any number of the candidates, a number of votes equal to the number of votes to which that Owner is entitled and voting upon other matters, multiplied by the number of directors to be elected. The candidates receiving the highest number of votes, up to the number of Board members to be elected, shall be deemed elected. Any director may be removed from office by a vote of the majority of the members entitled to vote at an election of directors;

provided, however, that unless the entire Board is removed, an individual director shall not be removed if the number of votes cast against his removal exceeds the quotient arrived at when the total number of votes cast is divided by one (1) plus the authorized number of directors. If any or all directors are so removed, new directors may be elected at the same meeting.

Section 7.4 Transfer. Except as otherwise expressly stated herein, any of the rights, interests and obligations of the Association set forth herein or reserved herein may be transferred or assigned to any other person or entity; provided, however, that no such transfer or assignment shall relieve the Association of any of the obligations set forth herein. Any such transfer or assignment shall not revoke or change any of the rights or obligations of any Owners as set forth herein.

Section 7.5 Amplification. The provisions of this Article are amplified by the Articles of Incorporation of the Association and by the By-Laws of the Association; provided, however, that no present or future provision of such Articles of Incorporation or By-Laws shall substantially alter or amend any of the rights or obligations of the Owners set forth herein.

ARTICLE VIII. Certain Rights and Obligations of the Association.

Section 8.1 The Management Body. The Association is hereby designated to be the "Management Body" as provided in Section 55-1503 and 55-1506 of the Idaho Code and shall administer the Project in accordance with the Condominium Property Act of such Code, the Articles of Incorporation and By-Laws of the Association and the provisions of this Declaration.

Section 8.2 The Common Area. The Association, subject to the rights of the Owners set forth in Article IV hereof, shall be responsible for the exclusive management and control of the Common Area and all improvements thereon (including furnishings, and equipment related thereto), and shall keep the same in good, clean, attractive and sanitary condition, order and repair; however, each Owner of a Condominium Unit shall keep the Limited Common Area designated for use in connection with his Unit in a clean, sanitary and attractive condition, and shall maintain and repair the heating equipment, and water heater servicing his Unit exclusively. The Association shall be responsible for the maintenance and repair of exterior surfaces of Buildings and improvements located on the Project, including without limitation, the painting of the same as often as necessary, the replacement of trim and caulking, the maintenance and repair of roofs, the maintenance and repair of other Common Area, including utility lines and all other improvements or materials located within or used in connection with the Common Area. The Association shall maintain in a proper, first class manner all recreational facilities and landscaping and natural vegetation constituting part of the Common Area, including assuring the preservation of good visual continuity between landscaped areas and natural vegetation. The specification of duties of the Association with respect to particular Common Area shall not be construed to limit its duties with respect to other Common Area, as set forth in the first sentence in this Section. The cost of such management, maintenance and repair by the Association shall be borne as provided in Article IX. The storage closets adjacent to an owner's condominium unit and constructed upon or within the Common Area shall be considered Common Area.

The Association by and through its officers shall have the right to grant easements for

utility purposes over, upon, across, under or through any portion of the Common Area, and each owner hereby irrevocably appoints this Association and its officers as attorney in fact for such purpose.

Section 8.3 Miscellaneous Services. The Association may obtain and pay for the services of any person or entity to manage its affairs, or any part thereof, to the extent it deems advisable, as well as such other personnel as the Association shall determine to be necessary or desirable for the proper operation of the Project, whether such personnel are furnished or employed directly by the Association or by any person or entity with whom or which it contracts. The Association may obtain and pay for legal and accounting services necessary or desirable, and the Board of Directors may rely on the accuracy and completeness of reports and services from contracted professionals, in connection with the operation of the Project or the enforcement of this Declaration. The Association may arrange with others to furnish electrical, water, sewer, trash collection services, and other common services to each Unit.

Section 8.4 Personal Property for Common Use. The Association may acquire and hold for the use and benefit of all the Owners tangible and intangible personal property and may dispose of the same by sale or otherwise, and the beneficial interest in any such property shall be deemed to be owned by the Owners in the same proportion as their respective interests in the Common Area. Such interest shall not be transferable except with the transfer of a Condominium. A transfer of a Condominium shall transfer to the transferee ownership of the transferor's beneficial interest in such property without any reference thereto. Each Owner may use such property in accordance with the purpose for which it is intended, without hindering or encroaching upon the lawful rights of other Owners. The transfer of title to a Condominium under the foreclosure shall entitle the purchaser to the interest in such personal property associated with the foreclosed Condominium.

Section 8.5 Rules and Regulations. The Association, through its Board of Directors, may make reasonable rules and regulations governing the use of Units and the Common Area, which rules and regulations shall be consistent with the rights and duties established in this Declaration. The association rules shall, among other things, govern the use of the Common Area by the owners and tenants and their guests or invitees. Such rules and regulations may include without limitation, assignment of particular portions of storage areas within the Common Area for exclusive use by owners of particular condominiums. A copy of the rules, as adopted, amended or repealed, shall be mailed or otherwise delivered to each owner within the project.

In addition to any other enforcement rights described in this Declaration and the By-Laws, or authorized by law and subject to any restrictions on the Association's enforcement rights, including any due process requirements, imposed by this Declaration, the By-Laws, or the law, the Association may take any of the following actions against any person or entity whose act or failure to act violates or threatens to violate any provisions of this Declaration, the By-Laws or Association Rules and Regulations:

- (a) Impose late charges and interest;
- (b) Impose monetary liquidated damages as provided below;

- (c) Suspend voting rights in the Association;
- (d) Suspend use privileges for the Common Area; and
- (e) Commence a legal action for damages, injunctive relief, or both.

The determination of whether to impose any of the foregoing sanctions shall be within the sole discretion of the Association. Any legal action may be brought in the name of the Association on its own behalf and on behalf of an owner who consents, and the prevailing party in any such action, shall be entitled to recover costs and reasonable attorneys fees including attorneys fees on appeal. The Association may make more than one of the foregoing enforcement actions against any one violation or threatened violation, provided that a suspension of use privileges shall not exceed six months (unless suspension is for delinquent assessments) and monetary liquidated damages shall not exceed \$100.00 a day after notice of the violation and failure of the owner to cure the violation within ten (10) days from the date of said notice. The liquidated damages as provided by Section 8.5(b) are not intended as a penalty but represent a reasonable attempt to estimate money damages that are difficult to determine and likely to occur due to the continuation of the violation after notice and the failure of the owner to timely cure the violation. The amount of liquidated damages shall be determined by the Association in its sole discretion after considering the severity of the violation. The Association may resolve or settle any dispute, including any legal action, under such terms and conditions as it considers appropriate.

Amounts owing by owners pursuant to this section may be collected by the Association by assessment as provided by the Declaration and any amendments thereto.

An owner shall be given ten (10) days prior notice before the imposition of any disciplinary action or liquidated damages and the reasons for such action. The notice shall be hand delivered, or mailed certified, return receipt requested, to the owner's last known address. The owner may request to be heard orally or in writing by a majority of the Board of Directors within ten (10) days from the date of the notice of violation. In such event a hearing will be scheduled within ten (10) days from the Association receipt of such request. If an owner fails to respond to the notice of violation within ten (10) days of the date thereof, the Association may implement any of the enforcement actions described in the notice.

The Association may not cause forfeiture or abridgement of an owner's right to the full use and enjoyment of his or her unit except by judgment of a court or decision arising out of arbitration or on account of foreclosure or a sale under power of sale for failure of the owner to pay assessments duly levied by the Association.

Section 8.6 Implied Rights. The Association may exercise any other right or privilege given to it expressly by this Declaration or by law, and every other right or privilege reasonably to be implied from the existence of any right or privilege given to it herein or reasonably necessary to effectuate any such right or privilege.

Section 8.7 Personal Liability. No member of the Board or of any committee of the Association or any officer of the Association, shall be personally liable to any member for any damage, loss or prejudice suffered or claimed on account of any act, omission, error, or negligence of any such person or entity if such person or entity has, on the basis of such information as may be possessed by him or her, acted in good faith without willful or intentional misconduct.

ARTICLE IX. Assessments.

Section 9.1 Agreement to Pay Assessment. Each Owner of any Condominium by the acceptance of a deed therefor, whether or not it be so expressed in the deed, shall be deemed to covenant and agree with each other and with the Association to pay to the Association periodic assessments made by the Association for the purposes provided in this Declaration, and special assessments for capital improvements and other matters as provided in this Declaration. In the case of joint or co-ownerships this liability shall be joint and several. Such assessments shall be fixed, established and collected from time to time in the manner provided in this Article.

Section 9.2 Amount of Total Periodic Assessments. The total periodic assessments against all Condominiums shall be based upon advance estimates of cash requirements by the Association to provide for the payment of all estimated expenses growing out of or connected with the maintenance and operation of the Common Area or furnishing electrical, water, sewer and trash collection services, and other common services, to each Unit, to the extent not separately metered and/or billed to a specific Unit, which estimates may include, among other things, expenses of management; taxes and special assessments, until the Condominiums are separately assessed as provided herein; premiums for all insurance which the Association is required or permitted to maintain pursuant hereto; landscaping and care of grounds; common lighting and heating; water charges; trash collection; sewer service charges; repairs and maintenance; wages for Association employees; legal and accounting fees; any deficit remaining from a previous period; the creation of a reasonable contingency reserve, surplus and/or sinking funds; expenses of operating and maintaining recreational facilities including expenses attributable to the swimming pool facility agreement in the form of Exhibit D; and any other expenses and liabilities which may be incurred by the Association for the benefit of the Owners under or by reason of this Declaration..

Section 9.3 Apportionment of Periodic Assessments. Until the sale by Declarant to a purchaser in the ordinary course of business of any of the Residential Units, expenses attributable to the Common Area and to the Project as a whole shall be apportioned equally among all Owners of the Garage Units. Following the sale of the first Residential Unit the expenses attributable to the Common Area and to the Project as a whole shall be apportioned among all Owners in proportion to the interest in the common Area owned by each Owner as set forth in Exhibit B hereof. Expenses attributable solely to a Garage Unit shall be apportioned equally among all Garage Owners.

Section 9.4 Notice of Periodic Assessments and Time for Payment Thereof. The Association shall make periodic assessments, which assessments shall be annually, quarterly or monthly as the Association shall from time to time determine. The Association may, in its

discretion, allow assessments to be given to each Owner, which notice shall specify the amount of the assessment and the date or dates of payment of the same. No payment shall be due less than fifteen (15) days after the said written notice has been given. Each periodic assessment shall bear interest at the rate of ten percent (10%) per annum from the date it becomes due and payable if not paid within thirty (30) days after such date and shall be subject to an automatic late charge of thirty-five dollars (\$35.00). Failure of the Association to give notice of the assessment shall not affect the liability of the Owner of any Condominium for such assessment, but the date when payment shall become due in such a case shall be deferred to a date fifteen (15) days after such notice shall have been given. The Board of Directors may, from time to time, change the rate of interest and late charges by resolution adopted at a meeting of the Board of Directors at which a quorum is present.

Section 9.5 Special Assessments. In addition to the annual assessments authorized by this Article, the Association may levy at any time a special assessment payable over such a period as the Association may determine, for the purpose of defraying in whole or in part the cost of any construction or reconstruction, unexpected repair or replacement of the Project or any part thereof, or for any other expense incurred or to be incurred as provided in this Declaration. This Section shall not be construed as an independent source of authority for the Association to incur expenses, but shall be construed to prescribe the manner of assessing for expenses authorized by other Sections hereof which shall make specific reference to this Article. Any amounts assessed pursuant hereto shall be assessed to Owners in the same manner as provided in Section 9.3 of this Article. Notice in writing of the amount of such special assessments and the time for payment thereof shall be given promptly to the Owners, and no payment shall be due less than thirty (30) days after such notice shall have been given. The Association shall have the power to incur expenses for maintenance and repair of any Unit if such maintenance and repair is necessary, in the opinion of the Board of Directors of the Association to protect the Common Area or any other portion of the Project, and if the Owner or Owners of said Unit have failed or refused to perform said maintenance or repair within a reasonable time after written notice of the necessity of said maintenance or repair has been delivered by the Board to said Owner or Owners. The Board shall levy a special assessment against the Owner or Owners of any such Unit to pay for the cost of such maintenance and repair, and any other costs or expenses arising out of or incident to such maintenance and repair, and the assessment therefor. A special assessment shall bear interest at the rate of ten percent (10%) per annum from the date it becomes due and payable if not paid within thirty days after such date and shall be subject to an automatic late charge of thirty-five dollars (\$35.00). The Board of Directors may, from time to time, change the rate of interest and late charges by resolution adopted at a meeting of the Board of Directors at which a quorum is present.

Section 9.6 Lien for Assessments. All sums assessed to any Condominium pursuant to this Article, together with interest thereon as provided herein, shall be secured by a lien on such Condominium in favor of the Association upon recordation of a notice of assessment as herein provided. Such lien shall be superior to all other liens and encumbrances on such Condominium except only for: (a) valid tax and special assessment liens on the Condominium in favor of any governmental assessing authority; (b) a lien for all sums unpaid on a first Mortgage, or on any Mortgage to Declarant, duly recorded in Blaine County, Idaho real estate records, including all unpaid obligatory advances to be made pursuant to such Mortgage and secured by the lien

thereof in accordance with the terms of such instrument; and (c) labor or materialmen's liens, to the extent required by law. All other lienors acquiring liens on any Condominium after this Declaration shall have been recorded in said records shall be deemed to consent that such liens shall be inferior liens to future liens for assessments as provided herein, whether or not such consent be specifically set forth in the instruments creating such liens.

To create a lien for sums assessed pursuant to this Article, the Association may prepare a written notice of assessment setting forth the amount of the assessment, the date due, the amount remaining unpaid, the name of the record owner of the Condominium and a description of the Condominium. Such a notice shall be signed by the Association and may be recorded in the office of the County Recorder of Blaine County, Idaho. No notice of assessment shall be recorded until there is a delinquency in payment of the assessment. Such lien may be enforced by sale by the Association after failure of the Owner to pay such an assessment in accordance with its terms, such sale to be conducted in the manner permitted by law in Idaho for the exercise of power of sale in deeds of trust or in any other manner permitted by law. The Owner shall be required to pay the costs and expenses of such proceeding, the costs and expenses of filing the notice of assessment and all reasonable attorneys' fees. All such costs and expenses shall be secured by the lien being foreclosed. The Owner shall also be required to pay to the Association any assessments against the Condominium which shall become due during the period of foreclosure. The Association shall have the right and power to bid at the foreclosure sale or other legal sale and to acquire, hold, convey, lease, rent, encumber, use and otherwise deal with the same as the Owner thereof.

A further notice stating the satisfaction and release of any such lien shall be executed by the Association and recorded in the Blaine County, Idaho real estate records, upon payment of all sums secured by a lien which has been made the subject of a recorded notice of assessment.

Any encumbrancer holding a lien on a Condominium may pay, but shall not be required to pay, any amounts secured by the lien created by this Section, and upon such payment such encumbrancer shall be subrogated to all rights of the Association with respect to such lien, including priority.

The Association shall report to any encumbrancer of a Condominium any unpaid assessment remaining unpaid for longer than ninety days after the same shall have become due; provided, however, that such encumbrancer first shall have furnished to the Association written notice of such encumbrance.

Unless sooner satisfied and released or the enforcement thereof initiated as provided earlier in this Section, any lien created pursuant to this Section shall expire and be of no further force or effect one year from the date of recordation of said notice of assessment; provided, however, that said one-year period may be extended by the Association for not to exceed one additional year by a written extension signed by the Association and recorded in the office of the County Recorder of Blaine County, Idaho, prior to expiration of said first one-year period.

Section 9.7 Personal Obligation of Owner. The amount of any periodic or special assessment against any Condominium shall be the personal obligation of the Owner thereof to

the Association. Suit to recover a money judgment for such personal obligation shall be maintainable by the Association without foreclosure or waiver of the lien securing the same. No Owner may avoid or diminish such personal obligation by waiver of the use and enjoyment of any of the Common Area or by abandonment of his Condominium.

Section 9.8 Statement of Account. Upon payment of a reasonable fee, not to exceed \$15 and upon written request of any Owner or any Mortgagee, prospective Mortgagee or prospective purchaser of a Condominium, the Association shall issue a written statement setting forth the amount of the unpaid assessments, if any, with respect to such Condominium, the amount of the current periodic assessment and the date that such assessment becomes or became due, credit for advanced payments or prepaid items, including, but not limited to, an Owner's share of prepaid insurance premiums, which statement shall be conclusive upon the Association in favor of persons who rely thereon in good faith. Unless such request for a statement of account shall be complied with within twenty (20) days, all unpaid assessments which became due prior to the date of making such request shall be subordinate to the lien of a Mortgagee which acquired its interest subsequent to requesting such statement. Where a prospective purchaser makes such request, both the lien for such unpaid assessments and the personal obligation of the purchaser shall be released automatically if the statement is not furnished within the twenty-day period provided herein and thereafter an additional written request is made by such purchaser and is not complied with within ten (10) days, and the purchaser subsequently acquires the Condominium.

Section 9.9 Personal Liability of Purchaser for Assessments. Subject to the provisions of Section 9.8, a purchaser of a Condominium shall be jointly and severally liable with the Seller for all unpaid assessments against the Condominium up to the time of the grant or conveyance, without prejudice to the purchaser's right to recover from the seller the amount paid by the purchaser for such assessments.

ARTICLE X. Use of Condominiums.

Section 10.1 Use of Units. Each Residential Condominium shall be used for residential purposes and no trade or business of any kind may be carried on therein, unless approved by the Board of Directors. Lease or rental of a Condominium for lodging or residential purposes shall not be considered to be a violation of this covenant. Owners shall be responsible for the actions of their tenants and guests while they reside in the Owners condominium, and shall be subject to rules violation enforcement procedures for noncompliance of these Declarations or reasonable rules and regulations established by the Board of Directors from time to time. The Garage Units are designed as automobile garages and therefore the use of such Garage Units shall be limited to the storage of motor vehicles and other personal property not prohibited by Section 10.3 and the use for residential or other purposes shall be and is prohibited. In addition the Garage Units have been constructed for the exclusive use by Owners of Fairway Nine One Condominiums, therefore no Garage Unit may be owned, leased or used by any person or entity other than an Owner of a Fairway Nine One Condominium, or subsequent phases of Fairway Nine One Condominiums or guests or renters of their respective Residential Units.

Section 10.2 Use of Common Area. There shall be no obstruction of the Common Area, nor shall anything be stored on any part of the Common Area without the prior written consent

of the Association. Nothing shall be altered on, constructed in, or removed from, the Common Area except upon the prior written consent of the Association. No modification or alteration of the open space or parking area of the Common Area which would affect the quantity or quality of such areas shall be made without the written consent of the Planning and Zoning Commission of the City of Sun Valley, Idaho and in accordance with the Master Declaration of Covenants, Conditions and Restrictions of Elkhorn at Sun Valley, recorded in the records of Blaine County, Idaho as Instrument No. 142929.

Section 10.3 Prohibition of Damage and Certain Activities. Nothing shall be done or kept in any Unit or in the Common Area or any part thereof which would result in the cancellation of the insurance on the Project or any part thereof or increase the rate of insurance on the Project or any part thereof over what the Association, but for such activity, would pay, without the prior written consent of the Association. Nothing shall be done or kept in any Unit or in the Common Area or any part thereof which would be in violation of any statute, rule, ordinance, regulation, permit or other validly imposed requirement of any governmental body. No damage to, or waste of, the Common Area or any part thereof shall be committed by any Owner or any invitee of any Owner, and each Owner shall indemnify and hold the Association and the other Owners harmless against all loss resulting from any such damage or waste caused by him or his invitees, provided, however, that any invitee of the Declarant shall not under any circumstances be deemed to be an invitee of any other Owner. No noxious, destructive or offensive activity shall be carried on in any Unit or in the Common Area or any part thereof, nor shall anything be done therein which may be or may become an annoyance or nuisance to any other Owner or to any person at any time lawfully residing in the Project.

Section 10.4 Animals. The Association may by rules or regulations prohibit or limit the raising, breeding, or keeping of animals, livestock, or poultry in any Unit or on the Common Area or any part thereof.

Section 10.5 Rules and Regulations. No Owner shall violate the rules and regulations for the use of the Units and of the Common Area as adopted from time to time by the Association, or its Board of Directors.

Section 10.6 Maintenance of Interiors. Each Owner shall keep the interior of his Unit, including, without limitation, interior walls, windows, glass, ceilings, floors, interior doors and permanent fixtures and appurtenances thereto, in a clean, sanitary and attractive condition, and good state of repair, and shall keep the Limited Common Area designated for use in connection with his Unit in clean, sanitary and attractive condition, and shall keep the heating equipment and water heater serving his Unit exclusively in a good state of maintenance and repair.

Section 10.7 Structural Alterations. No structural alterations to any Unit shall be made, and no plumbing, electrical or similar work within the Common Area shall be done, by any Owner without the prior written consent of the Association and the Architectural Control Committee, except that an Owner may do such work as may be appropriate to maintain and repair Limited Common Area appurtenant to such Owner's Unit.

Section 10.8 Parking Restrictions. No vehicle shall be parked or left on the property

subject to this Declaration other than on the designated parking area. The parking area shall be used for parking operable vehicles only and shall not be converted for living, recreational or business purposes, nor shall anything be stored in any parking area so as to prevent the parking of an automobile therein. No exposed storage shall be permitted anywhere on the property. Camper and boat storage on the Common Area shall be permitted only pursuant to Association rules or regulations. The long term parking of vehicles shall be regulated in accordance with Association rules or regulations.

Section 10.9 Signs. Except for signs as may be used in connection with the sale of condominiums, no sign of any kind shall be displayed to the public view without the approval of the Board of Directors.

Section 10.10 Nuisances. No rubbish or debris of any kind shall be placed or permitted to accumulate and no odors shall be permitted to arise from the property so as to render any portion of the property unsanitary, unsightly, offensive or detrimental to any other property in the vicinity thereof or to its occupants. No noise or other nuisance shall be permitted to exist or operate upon any such property so as to be offensive or detrimental to any other property in the vicinity thereof or its occupants. Without limiting the generality of any of the following provisions, no exterior speakers, horns, whistles, bells or other sound devices (other than security systems used exclusively for security purposes) shall be located, used or placed on any such property without the prior written approval of the Board of Directors. The cost to remove rubbish, debris, offensive odors or noise devices incurred by Association shall be billed directly to the Owner of the condominium who is in direct violation of this Section 10.10.

Section 10.11 Outside Installations. No clothes lines, television antennas, wiring or installation of air conditioning or other machines shall be installed on the exterior of the building or be allowed to protrude through the walls, the windows or the roof of the building, unless the prior written approval of the Board of Directors is secured.

ARTICLE XI. Insurance.

Section 11.1 Types of Insurance. The Association shall obtain and keep in full force and effect at all times the following insurance coverage provided by companies duly authorized to do business in Idaho. The provisions of this Article shall not be construed to limit the power or authority of the Association to obtain and maintain insurance coverage, in addition to any insurance coverage required hereunder, in such amounts and in such forms as the Association may deem appropriate from time to time. In order to facilitate the providing and maintaining of adequate and proper insurance, it is contemplated that Declarant may contract for blanket insurance coverage covering the Project as contemplated by this Article XI prior to or concurrently with the first conveyance of a Condominium and any obligations or commitments for the payment of premiums or expenses otherwise incurred by Declarant under any such blanket policy or coverage, whether or not the same is also a personal obligation of the purchaser or purchasers of any Condominiums, shall become an obligation of the Association and shall be paid for out of Association Funds.

(a) Casualty and Fidelity Insurance. The Association shall obtain insurance on

the Project in the event of damage or destruction from the casualty against which insurance is obtained, in such amounts as shall provide for the replacement value of the condominium units as they were sold under the original specifications before any subsequent additions by the unit owner all in the manner in which a corporation owning similar multiple family residential buildings in the vicinity of the project would, in the exercise of prudent judgment, obtain such insurance. Such insurance is intended to provide coverage for fixtures within the perimeter walls, floors and ceiling of the condominium unit. Fixtures include, but not limited to; paint and wall coverings, carpets and floor coverings, drapes, cabinets and appliances, non-load bearing walls, doors and plumbing and electrical fixtures. Further, such insurance shall include fire and extended coverage, building ordinance of law coverage, vandalism and malicious mischief and such other risks and hazards against which the Association shall deem appropriate to provide insurance protection. Management may comply with the above requirements by purchase of blanket coverage and may elect such "deductible" provisions as in the Management's opinion are consistent with good business practice. *(Second Amendment 11-17-94)* The Association shall purchase, in such amounts and in such forms as it shall deem appropriate, coverage against dishonesty of employees, destruction or disappearance of money or securities, and forgery.

(b) Public Liability and Property Damage Insurance. The Association shall purchase broad form comprehensive liability coverage in such amounts and in such forms as it deems advisable to provide adequate protection. Coverage shall include, liability for personal injuries, operation of automobiles on behalf of the Association, and activities in connection with the ownership, operation, maintenance and other use of the Common Areas. Contractors performing services on behalf of Association shall provide proof of liability insurance, and if requested, shall provide certificate of insurance listing Association as additional insured.

(c) Workmen's Compensation and Employer's Liability Insurance. The Association may require, as deemed appropriate by Law, proof of Worker's Compensation and Employer's Liability coverage for all contracted laborers performing services on behalf of the Association.

(d) Fidelity Insurance. Deleted in its entirety September 4, 2009.

(e) Other. The Association may obtain insurance against such other risks, of a similar or dissimilar nature, as it shall deem appropriate with respect to the Project, including any personal property of the Association located thereon.

Section 11.2 Optional Insurance. Deleted in its entirety September 4, 2009.

Section 11.3 Form. Casualty insurance shall be carried in a form or forms naming the Association the insured as trustee for the Owners, which policy or policies shall specify the interest of each Condominium Owner (Owner's name, Unit Number, the appurtenant undivided interest in the Common Area) and which policy or policies shall provide a standard loss payable clause providing for payment of insurance proceeds to the Association as trustee for the Owners and for the respective first Mortgagees which from time to time shall give notice to the Association of such first Mortgagees, such proceeds to be used in accordance with this Declaration. Each policy shall also provide that it cannot be cancelled by either the insured or the

insurance company until after thirty (30) days' prior written notice is first given to each Owner and to each first Mortgagee. The Association shall furnish to each Owner who requests it a true copy of such policy together with a certificate identifying the interest of the Owner. All policies of insurance shall provide for a waiver of subrogation by the insurer as to claims against the Association, the Board, and agents and against each Owner and each Owner's employees, agents and guests and shall provide that the insurance cannot be cancelled, invalidated or suspended on account of the conduct of the Association, the Board, employees and agents or of any Owner or such Owner's employees, agents or guests, and shall provide that any "no other insurance" clause in the insurance policy shall exclude any policies of insurance maintained by any Owner or Mortgagee and that the insurance policy shall not be brought into contribution with insurance maintained by any Owner or Mortgagee.

Public liability and property damage insurance shall name the Association the insured, as trustee for the Owners, and shall protect each Owner against liability for acts of the Association in connection with the ownership, operation, maintenance or other use of the Project.

Section 11.4 Owner's Responsibility. Insurance coverage on any improvement installed by the owner, guests or tenants, unless the Management pursuant to Section 11.1 hereof, elects to arrange for such casualty insurance, and public liability insurance coverage within each individual unit and for activities of the owner, not acting by the Management with respect to common area, unless the Management pursuant to Section 11.1 hereof, elects to arrange for such casualty insurance, and regardless of the Management election, insurance coverage against loss from theft on all personal property placed in the unit by the owners, shall be the responsibility of the respective owners. *(Second Amendment – 11-17-94)*

Section 11.5 Insurance Proceeds. The Association shall receive the proceeds of any casualty insurance payments received under policies obtained and maintained pursuant to this Article. The Association shall apportion the proceeds to the portions of the Project which have been damaged and shall determine the amount of the proceeds attributable to damage to the Common Area. To the extent that reconstruction is required herein, the proceeds shall be used for such purpose. To the extent that reconstruction is not required herein and there is a determination that the Project shall not be rebuilt, the proceeds shall be distributed in the same manner herein provided in the event of sale of obsolete Units, as set forth in Section 13.4. Each Owner and each Mortgagee shall be bound by the apportionments of damage and of the insurance proceeds made by the Association pursuant hereto.

Section 11.6 Owner's Own Insurance. Notwithstanding the provisions of Section 11.1 hereof, each Owner may obtain insurance at his own expense providing coverage upon his Condominium, his personal property, for his personal liability, and covering such other risks as he may deem appropriate, but each such policy shall provide that it does not diminish the insurance carrier's coverage for liability arising under insurance policies which the Association obtains pursuant to this Article. All such insurance of the Owner's condominium shall waive the insurance company's right of subrogation against the Association, the other Owners, and the servants, agents and guests of any of them and Mortgagee. If any Owner violates this provision, any diminution in insurance proceeds otherwise payable under policies described in this Section that results from the existence of such other insurance will be chargeable to the Owner who

acquired such other insurance, and such Owner shall be liable to the Association to the extent of any such diminution. In addition, any improvements made by an Owner within his Unit may be separately insured by such Owner, but such insurance shall be limited to the type commonly known as "tenant's improvements" insurance.

ARTICLE XII. Casualty Damage or Destruction.

Section 12.1 Affects Title. Title to each Condominium is hereby made subject to the terms and conditions hereof, which bind the all subsequent Owners, whether or not it be so expressed in the deed by which any Owner acquires his Condominium.

Section 12.2 Association as Agent. All of the Owners irrevocably constitute and appoint the Association by and through its elected officers their true and lawful attorney in fact in their name, place and stead for the purpose of dealing with the Project upon its damage or destruction as hereinafter provided. Acceptance by any grantee of a deed from the Declarant or from any Owner shall constitute such appointment.

Section 12.3 General Authority of Association. As attorney in fact, the Association by and through its elected officers shall have full and complete authorization, right and power to make, execute and deliver any contract, deed, or other instrument with respect to the interest of a Condominium Owner which may be necessary or appropriate to exercise the powers herein granted. Repair and reconstruction of the improvements as used in the succeeding subparagraphs mean restoring the Project to substantially the same vertical and horizontal boundaries as before. The proceeds of any insurance collected shall be available to the Association for the purpose of repair or reconstruction unless the Owners and all first Mortgagees unanimously agree not to rebuild in accordance with the provisions set forth hereinafter.

In the event any Mortgagee should not agree not to rebuild, the Association shall have the option to purchase such Mortgage by payment in full of the amount secured thereby if the Owners are in unanimous agreement not to rebuild. The Association shall obtain the funds for such purpose by special assessments under Article IX of this Declaration.

Section 12.4 Estimate of Costs. As soon as practicable after an event causing damage to, or destruction of, any part of the project, the Association shall obtain estimates that it deems reliable and complete of the costs of repair or reconstruction of that part of the Project damaged or destroyed.

Section 12.5 Repair or Reconstruction. As soon as practicable after receiving these estimates the Association shall diligently pursue to completion the repair or reconstruction of that part of the Project damaged or destroyed. The Association may take all necessary or appropriate action to effect repair or reconstruction, as attorney in fact for the Owners, and no consent or other action by any Owner shall be necessary in connection therewith. Such repair or reconstruction shall be in accordance with the original plans and specifications of the Project or may be in accordance with any other plans and specifications the Association may approve, provided that in such latter event in the absence of the consent of each affected Owner the number of cubic feet and the number of square feet of any Unit may not vary by more than 5%

from the number of cubic feet and the number of square feet for such Unit as originally constructed pursuant to such original plans and specifications, and the location of the Buildings shall be substantially the same as prior to damage or destruction.

Section 12.6 Funds for Reconstruction. The proceeds of any insurance collected shall be available to the Association for the purpose of repair or reconstruction. If the proceeds of the insurance are insufficient to pay the estimated or actual cost of such repair or reconstruction, the Association, pursuant to Article IX hereof, may levy in advance a special assessment sufficient to provide funds to pay such estimated or actual costs of repair or reconstruction. Such assessment shall be allocated and collected as provided in that Article. Further levies may be made in like manner if the amounts collected prove insufficient to complete the repair or reconstruction.

Section 12.7 Disbursement of Funds for Repair or Reconstruction. The insurance proceeds held by the Association and the amounts received from the assessments provided for in Section 12.6 constitute a fund for the payment of cost of repair and reconstruction after casualty. It shall be deemed that the first money disbursed in payment for cost of repair or reconstruction shall be made from insurance proceeds; if there is a balance after payment of all costs 'of such repair or reconstruction such balance shall be distributed to the Owners in proportion to the contributions by each Owner pursuant to the assessments by the Association under Section 12.6 of this Declaration.

Section 12.8 Decision Not to Rebuild. If all Owners and all holders of first Mortgages on Condominiums agree not to rebuild, as provided herein, the Project shall be sold and the proceeds distributed in the same manner herein provided in the event of sale of obsolete units, as set forth in Section 13.4.

ARTICLE XIII. Obsolescence.

Section 13.1 Adoption of a Plan. The record Owners, as reflected on the real estate record of Blaine County, Idaho, representing an aggregate record ownership interest of 85% or more of the Units may agree that the Project is obsolete and adopt a written plan for the renewal and reconstruction, which plan has the unanimous approval of all first Mortgagees of record at the time of the adoption of such plan. Written notice of adoption of such a plan shall be given to all Owners. Such plan shall be recorded in Blaine County, Idaho, real estate records.

Section 13.2 Payment for Renewal and Reconstruction. The expense of renewal or reconstruction shall be payable by all of the Owners as assessments against their respective Condominiums. These assessments shall be levied in advance pursuant to Article IX hereof and shall be allocated and collected as provided in that Article. Further levies may be made in like manner if the amounts collected prove insufficient to complete the renewal and reconstruction.

Section 13.3 Dissents from the Plan. An Owner not a party to such a plan for renewal or reconstruction may give written notice of dissent to the Association within fifteen days after the recordation of such plan. The Association shall then give written advice of such dissents to all the Owners within five days after the expiration of such fifteen-day period. Within fifteen days

of receipt of such notice from the Association, the record Owners, representing an aggregate record ownership of more than 15% of the Units may cancel the plan by written instrument recorded in Blaine County, Idaho, real estate records. If the plan is not cancelled, then the Condominium of each dissenter shall be purchased according to the following procedures. If the Owner and the Association can agree on the fair market value thereof, then such sale and conveyance shall be completed within sixty days thereafter. If the parties are unable to agree, the date when either party notifies the other that he or it is unable to agree with the other shall be the "Commencing date" from which all periods of time mentioned herein shall be measured. Within ten days following the commencing date each party shall nominate a qualified appraiser by written nomination and shall give notice of such nomination to the other. If either party fails to make such nomination, the appraiser nominated shall, within five days after default by the other party appoint and associate with him another qualified appraiser. If the two appraisers designated by the parties, or selected pursuant hereto in the event of default of one party, are unable to agree, they shall appoint another qualified appraiser to be umpire between them, if they can agree on such person. If they are unable to agree upon such umpire, then each appraiser previously appointed shall nominate two qualified appraisers, and from the names of the four persons so nominated one shall be drawn by lot by judge of any court of record in Idaho, and the person whose name is so drawn shall be the umpire. The nominations from among which the name of the umpire is to be drawn by lot shall be submitted within ten days after the failure of the two appraisers to agree, which, in any event, shall not be later than twenty days following the appointment of the second appraiser. The decision of the appraisers as to the fair market value, or in the case of their disagreement, the decision of such umpire shall be final and binding. The expenses and fees of such appraisers shall be borne equally by the Association and the Owner. The sale shall be consummated within sixty days after decision of the appraisers and the Association as attorney in fact shall disburse the proceeds in the same manner provided in Section 13.4 of this Declaration. The obligation of the Association to make such purchase shall be conditioned on the fair market value of the Condominium exceeding the obligations secured by liens on such Condominium, and upon the marketability of the title of the Owner. Owner shall furnish the Association an appropriate abstract of title or commitment for title insurance evidencing marketability of his title not less than fifteen days prior to the date set for completion of the sale.

The Association, pursuant to Article IX hereof, may levy a special assessment sufficient to provide funds to pay for the Condominiums of the Dissenters, provided that such assessments shall not apply to any of the Owners who are among the dissenters and shall not be liens against the Condominium of such Owners.

Section 13.4 Sale of Obsolete Units. The Owners representing an aggregate ownership interest of 66-2/3% or more of the Units may agree that the Condominiums are obsolete and that the Project should be sold. Such an agreement must have the unanimous approval of every first mortgagee of record at the time such agreement is made. In such instance the Association shall forthwith record a notice setting forth such fact or facts, and upon the recording of such notice by the Association the Project shall be sold by the Association as attorney in fact for all of the Owners free and clear of the provisions contained in this Declaration, the Condominium Map and the By-Laws. The sale proceeds shall be apportioned among the Owners in proportions set forth on Exhibit B and such apportioned proceeds shall be paid into separate accounts, each

account representing one Condominium. Each such account shall remain in the name of the Association, and shall be further identified by the Condominium designation and the name of the Owner. From each separate account the Association, as attorney in fact, shall use and disburse the total amount of such accounts without contribution from one account to the other first to mortgagees and other lienors in the order of priority of their mortgages and other liens and the balance remaining to each respective Owner.

Section 13.5 Distribution of Excess. In the event amounts collected pursuant to Section 13.2 are in excess of the amounts required for renewal and reconstruction, the excess shall be returned to the Owners by the Association by a distribution to each Owner in an amount proportionate to the respective amount collected from each such Owner.

ARTICLE XIV. Condemnation.

Section 14.1 Consequences of Condemnation. If at any time or times during the continuance of the condominium ownership pursuant to this Declaration, all or any part of the Project shall be taken or condemned by any public authority or sold or otherwise disposed of in lieu of or in avoidance thereof, the following provisions shall apply.

Section 14.2 Proceeds. All compensation, damages, or other proceeds therefrom the sum of which is hereinafter called the "Condemnation Award", shall be payable to the Association.

Section 14.3 Complete Taking. In the event that the entire Project is taken or condemned, or sold or otherwise disposed of in lieu of or in avoidance thereof, the condominium ownership pursuant hereto shall terminate. The Condemnation Award shall be apportioned among the Owners in the proportions set forth in Exhibit B provided that if a standard different from the value of the Project as a whole is employed to measure the Condemnation Award in the negotiation, judicial decree or otherwise, then in determining such shares the same standard shall be employed to the extent it is relevant and applicable.

On the basis of the principle set forth in the last preceding paragraph, the Association shall as soon as practicable determine the share of the Condemnation Award to which each Owner is entitled. Such shares shall be paid into separate accounts and disbursed as soon as practicable in the same manner provided in Section 13.4 of this Declaration.

Section 14.4 Partial Taking. In the event that less than the entire Project is taken or condemned, or sold or otherwise disposed of in-lieu of or in avoidance thereof, the condominium ownership hereunder shall not terminate. Each owner shall be entitled to a share of the Condemnation Award to be determined in the following manner: As soon as practicable the Association shall, reasonably and in good faith, allocate the Condemnation Award between compensation, damages, or other proceeds, and shall apportion the amounts so allocated among the Owners as follows:

(a) the total amount allocated to taking of or injury to the Common Area shall be apportioned equally among Owners,

(b) the total amount allocated to severance damages shall be apportioned to those condominiums which were not taken or condemned,

(c) the respective amounts allocated to the taking of or injury to a particular Unit and/or improvements an Owner has made within his own Unit shall be apportioned to the particular Unit involved, and

(d) the total amount allocated to consequential damages and any other takings or injuries shall be apportioned as the Association determines to be equitable in the circumstances. If an allocation of the Condemnation Award is already established in negotiation, judicial decree, or otherwise, then in allocating the Condemnation Award the Association shall employ such allocation to the extent it is relevant and applicable. Distribution of apportioned proceeds shall be made in the same manner provided in Section 13.4 of this Declaration.

Section 14.5 Reorganization. In the event a partial taking results in the taking of a complete Unit, the Owner thereof automatically shall cease to be a member of the Association. Thereafter the Association shall reallocate the Ownership, voting rights, and assessment ratio determined in accordance with this Declaration according to the same principles employed in this Declaration at its inception and shall submit such reallocation to the Owners of remaining Units for amendment of this Declaration as provided in Article XV hereof.

Section 14.6 Reconstruction and Repair. Any reconstruction and repair necessitated by condemnation shall be governed by the procedures specified in Article XII above.

ARTICLE XV. Revocation or Amendment to Declaration.

This Declaration shall not be revoked nor shall any of its provisions herein be amended unless the Owners holding two-thirds (2/3) of the total membership voting power consent and agree to such revocation or amendment by instruments duly recorded except as provided by this Article. Furthermore, the prior written consent of holders of fifty-one percent (51%) of first mortgages shall be required to revoke this Declaration or to amend any provision of this Declaration that is material and legitimately within the purview of the first mortgage holder and that impairs the security of first mortgages in connection with the following subjects:

- (a) Purpose for which the condominium project may be used;
- (b) Creation and subordination of condominium assessment liens;
- (c) Reserves for repair and replacement of Common Area improvements.
- (d) Voting;
- (e) Casualty and liability insurance; and
- (f) Any provision which, by its terms, is specifically for the benefit of first mortgagees, or specifically confers rights on first mortgages.

Any first Mortgagee who receives a written request to consent to additions or amendments requiring consent under this section who does not deliver or post to the requesting party a negative response within thirty (30) days after such receipt shall be deemed to have consented to such request.

Any such revocation or amendment shall be binding upon every owner and every condominium whether the burdens thereon are increased or decreased by any such amendment and whether or not the owner of each and every condominium consents thereto.

It is the intent that this Declaration and the Articles and Bylaws of the Association shall now and in the future meet all requirements necessary to purchase, guarantee, insure, or subsidize any mortgage of a condominium by a governmental entity or agency. The Association and each owner shall take any action or shall adopt any resolutions required by any mortgagee to conform this Declaration to the requirements of any such entities or agencies.

Notwithstanding the foregoing, the Board of Directors has the authority and may amend this Declaration to correct any inaccurate, ambiguous or illegal provisions, or other provisions for "housekeeping" purposes, provided, however, such amendments shall not affect the substantive rights of the owners in any way. Further, the Board of Directors may amend this Declaration to comply with the Fair Housing Act and any other state or federal laws.

ARTICLE XVI. Period of Condominium Ownership.

The condominium ownership created by this Declarant and the Condominium Map shall continue until this Declaration is revoked in the manner provided in Article XV of this Declaration or until terminated in the manner provided in Articles XIII (Obsolescence) or XIV (Condemnation) of this Declaration.

ARTICLE XVII. Miscellaneous.

Section 17.1 Compliance with Provisions of Declaration and By-Laws of the Association. Each Owner shall comply with the provisions of this Declaration, the Articles of Incorporation and the By-Laws, rules and regulations of the Association, and the decisions and resolutions of the Association adopted pursuant thereto as the same may be lawfully amended from time to time. Failure to comply with any of the same shall be grounds for an action to recover sums due and for damages or injunctive relief or both, maintainable by the Association on behalf of the Owners, or, in a proper case, by an aggrieved Owner.

Section 17.2 Registration of Mailing Address. Each Owner shall register his mailing address with the Association and all notices or demands intended to be served upon any Owner shall be sent by either Registered or Certified mail, postage prepaid, addressed in the name of the Owner at such registered mailing address. All notices or demands intended to be served upon the Association shall be given by Registered or Certified mail, postage prepaid, to the address of the

Association as designated in the By-Laws of the Association. All notices or demands to be served on Mortgagees pursuant thereto shall be sent by either Registered or Certified mail, postage prepaid, addressed in the name of the Mortgagee at such address as the Mortgagee may have furnished to the Association in writing. Unless the Mortgagee furnishes the Association such address, the Mortgagee shall be entitled to receive none of the notices provided for in this Declaration. Any notice referred to in this Section shall be deemed given when deposited in the United States mail in the form provided for in this Section.

Section 17.3 Transfer of Declarant's Rights. Any right or any interest reserved hereby to the Declarant may be transferred or assigned by the Declarant either separately or with one or more of such rights or interests, to any person or entity.

Section 17.4 Elkhorn Master Declaration and Association. The Project and the real property described on Exhibit A is subject to the Elkhorn Master Declaration of Covenants, Conditions and Restrictions ("Master Declaration" herein) and the Notice of Addition of Territory and Supplemental Declaration of Covenants, Conditions and Restrictions for "Dempsey Construction Corp., Inc./Fairway 9" ("Supplemental Declaration" herein) recorded as Instrument Numbers 142929 and 190036 respectively in the Blaine County, Idaho, real estate records and such real property is designated as Multi-Family Residential Area. Said Master Declaration provides a plan for establishment and maintenance of area subject thereto as part of a scenic and pastoral mountain residential area. Said Master Declaration provides for the performance of certain functions within certain areas for and on behalf of owners of property within the areas subject thereto by the Elkhorn Property Owners' Association, Inc. ("Owners' Association" herein) and each owner of a Condominium shall be entitled to the benefits, and subject to the obligations, including obligations with respect to assessments, as provided in said Master Declaration and the Articles and By-Laws of such Owners' Association.

Section 17.5 Owner's Obligations Continue. All obligations of the Owner under and by virtue of the provisions contained in this Declaration shall continue, notwithstanding that he may have leased or rented said interest as provided herein, but the Owner of a Condominium shall have no obligation for expenses or other obligations accruing after he conveys such Condominium.

Section 17.6 Number and Gender. Whenever used herein, unless the context shall otherwise provide, the singular number shall include the plural, the plural the singular, and the use of any gender shall include all genders.

Section 17.7 Severability. If any of the provisions of this Declaration or any clause, paragraph, sentence, phrase or word or the application thereof in any circumstances be invalidated, such invalidity shall not affect the validity of the remainder of the Declaration, and the application of any such provision, paragraph, sentence, clause, phrase or word in any other circumstance shall not be affected thereby.

Section 17.8 Construction by Declarant. Deleted in its entirety September 4, 2009.

Section 17.9 Statute. The provisions of this Declaration shall be in addition and

supplemental to the Condominium Property Act of the State of Idaho and to all other provisions of law.

IN WITNESS WHEREOF, THE Association, through its President and Secretary, certify that this Amended and Restated Declaration was duly approved, agree and consented to by owners representing aggregate ownership interest of sixty-six and two-thirds percent (66-2/3%) or more of Fairway Nine One Condominiums as reflected on the real estate records of Blaine County, Idaho.

FAIRWAY NINE ONE ASSOCIATION

By 
Its President

By Robert E. Hildeman
Its Secretary

ACKNOWLEDGMENTS

STATE OF IDAHO)
)ss:
County of BLAINE)

On this 12 day of APRIL, 2010, before me, the undersigned, a Notary Public, personally appeared ROBERT NICHOLSON, known or identified to me to be the President of Fairway Nine One Association, the corporation that executed the instrument or the person who executed the instrument on behalf of said corporation, and acknowledged to me that such corporation executed the same.

WITNESS MY HAND AND SEAL



[Signature]
NOTARY PUBLIC for _____
Residing at: BLAINE COUNTY
Commission Expires 7-12-2010

STATE OF ARIZONA)
)ss:
County of MARICOPA)

On this 29 day of MARCH, 2010, 2010, before me, the undersigned, a Notary Public, personally appeared Hildegard R Edward, known or identified to me to be the Secretary of Fairway Nine One Association, the corporation that executed the instrument or the person who executed the instrument on behalf of said corporation, and acknowledged to me that such corporation executed the same.

WITNESS MY HAND AND SEAL



[Signature]
NOTARY PUBLIC for _____
Residing at: ARIZONA, Scottsdale
Commission Expires MAY 4 2012